

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government— HB 1049 CS provides for an additional sanction for any person who sells, gives, serves or permits to be served alcoholic beverages to a person under age 21 or permits a person under 21 to consume alcoholic beverages on the licensed premises. The bill exempts licensees under the Beverage Law, Chapter 561, F.S., and their employees or agents from this additional sanction.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Section 562.11(1)(a), F.S., provides that it is unlawful to sell, give, serve or permit to be served alcoholic beverages to a person under 21 years of age or to permit a person under 21 years of age to consume alcoholic beverages on the licensed premises. Anyone convicted of a violation of these provisions is guilty of a misdemeanor of the second degree, punishable by a term of imprisonment not exceeding 60 days and a fine not to exceed \$500.

Pursuant to s. 561.01, F.S., a “licensee” under the Beverage Law (defined in chs. 562, 563, 564, 565, 567, and 568, F.S.), means a “legal or business entity, person, or persons that hold a license issued by the [Division of Alcoholic Beverages and Tobacco] and meet the qualifications set forth in s. 561.15, F.S.”

Chapter 322, F.S., relates to the administration of driver’s licenses by the department. Section 322.01(16), F.S., defines the term “driver’s license” to mean “a certificate which, subject to all other requirements of law, authorizes an individual to drive a motor vehicle.”

Persons under the age of 21 may be employed by alcoholic beverage licensees. Section 562.13, F.S., prohibits alcoholic beverage vendors to employ any person less than 18 years of age, but this prohibition does not apply to:

- Professional entertainers 17 years of age who are not in school;
- Minors employed in the entertainment industry and who are employed under the procedures established for such employment or who have been granted a waiver from the Child Labor Law;
- Persons under the age of 18 years employed in drugstores, grocery stores, department stores, florists, specialty gift shops, or automobile service stations which have licenses to sell beer and wine for consumption off the premises;
- Any senior high school student with written permission of their principal or any high school graduate employed by a bona fide food service establishment where alcoholic beverages are sold if they do not participate in the sale, preparation, or service of alcoholic beverages and their duties provide training that may lead to advancement in the food service establishments;
- Persons under the age of 18 years employed as bellhops, elevator operators, and other duties in hotels that do not work in the portion of the hotel where alcoholic beverages are sold for consumption on the premises;
- Persons under the age of 18 years employed in bowling alleys if they do not participate in the sale, preparation, or service of alcoholic beverages;
- Persons under the age of 18 years employed by a bona fide dinner theater whose employment is limited to being an actor, actress, or musician;

- Persons under the age of 18 years who are employed by a theme park as provided in s. 562.02(6), F.S., if they do not participate in the sale, preparation, or service of alcoholic beverages; or
- A minor subject to this section, may not be employed if the employment involves nudity on the part of the minor and the nudity is intended as adult entertainment.

Driver's License Suspension or Revocations

Section 322.28, F.S., sets forth the provisions related to suspension or revocation of driver's licenses. Section 322.28(1), F.S., provides the department shall not suspend a license for a period of more than one year. The section also provides an exception to this limit for violations related to driving under the influence of alcoholic beverages, chemical substances as set forth in s. 877.111, F.S., or controlled substances. For these violations, the department is prohibited from granting a new license until the expiration of one year after such revocation.

Section 322.271, F.S., provides the court may direct the department to issue a driver's license restricted to business or employment purposes only to a person who is otherwise qualified for a license.

Proposed Changes

The bill amends s. 562.11, F.S., to authorize courts to order the DHSMV to withhold the issuance of, or suspend or revoke, the driver's license or driving privilege of any person who violates the sale to minors prohibition in s. 562.11(1), F.S. The bill exempts alcoholic beverage licensees, and employees or agents of a licensee who violate s. 562.11(1), F.S., while engaged within the scope of their license, employment, or agency thus making the penalty applicable only to third-parties who sell, give, serve, or permit to be served alcoholic beverages to a person under 21 years of age.

The bill creates s. 322.057, F.S., to provide, notwithstanding s. 322.28, F.S., courts may order the DHSMV to withhold the issuance of, or suspend or revoke, the driver's license or driving privilege of any person who violates the sale to underage persons prohibition in s. 562.11(1), F.S. Alcoholic beverage licensees and employees or agents of a licensee who violate the prohibition in s. 562.11(1), F.S., while engaged within the scope of their license, employment, or agency are exempted.

This section provides a time frame for the delay in issuance of a license or the suspension or revocation of a license of not less than 3 months or more than 6 months for a first violation and one year for any subsequent violation.

C. SECTION DIRECTORY:

Section 1. Amends s. 562.11, F.S., providing for an additional sanction for any person who sells, gives, serves or permits to be served alcoholic beverages to a person under age 21 or permits a person under 21 to consume alcoholic beverages on the licensed premises. The bill exempts licensees under the Beverage Law, Chapter 561, F.S., and their employees or agents from this additional sanction.

Section 2. Creates s. 322.057, F.S., to provide that the period in which the driver's license would be withheld, suspended or revoked would be between 3 and 6 months for the first violation and one year for any subsequent violation. The bill would permit the court to order the DHSMV to issue a driver's license restricted to business or employment purposes, if the person otherwise qualifies for a driver's license

Section 3. Provides that the bill takes effect July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to the DHSMV, this bill may generate additional revenue as a result of reinstating the driving privileges of persons suspended or revoked pursuant to this bill. However, the number of individuals to be suspended and the amount of revenue to be collected is indeterminate. Additionally, the DHSMV will incur an indeterminate amount of administrative expense in managing the withholding, suspension, and revocation of driver's licenses. DHSMV also believes this bill will require programming modifications to driver license software systems that will be absorbed as part of the normal workload.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenues in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 22, 2006, the Judiciary Committee amended the Transportation Committee CS to clarify that the licensee to which the CS refers is a licensee under the beverage law and not a person having a driver's license. The bill was then reported out favorably as a committee substitute.

On March 14, 2006, the Transportation Committee amended HB 1049 to make minor grammatical corrections. The committee then voted 13-2 to report the bill favorably with committee substitute.